

## PUZZLE SOLUTION - July 2008 *DHRC-I Insider*

**Scenario:** You are a supervisor with an employee who sustained a work-related back injury nine months ago. The employee initially missed 45 days of work. After that, the employee returned to work and has remained on light duty ever since. The employee is a good worker and you and he have a long history together. The problem is that his work limitations have gotten progressively more restrictive in the last couple of weeks. Plus, the employee now says his doctor wants to do surgery, which is something he has put off since the injury. It is becoming increasingly difficult to accommodate him and now with surgery looming, there is no clear end in sight regarding his continued light duty requirement. You consider your options, and determine the best course of action to be:

The best answer is:

- A. Continue to provide reasonable accommodation for the employee's work restrictions because there is the inherent expectation that the surgery will improve or resolve his condition. You also realize that if the Agency is unable to accommodate restrictions due to a work injury, that the employee will likely be eligible for wage-loss compensation benefits from the U.S. Department of Labor (DOL), which could result in a sizeable cost liability for the Agency.**

Under the Federal Employees' Compensation Act, an injured employee has mandatory restoration rights to the position held on the date of injury, or a comparable one, if recovery occurs within one year from the date compensation begins. Generally speaking, it is easier to return an employee to work while he/she remains on the Agency's rolls. Separating the employee under the stated circumstances would likely cause him to be placed on DOL's long term compensation rolls, which would result in significant cost to the Agency over the lifetime of the employee's claim. Wage loss compensation benefits paid by DOL are not the same as disability retirement benefits, which are payable by the Office of Personnel Management (OPM).

**Bonus Question: If the employee is approved for disability retirement, how will it affect his injury claim with DOL?**

An injured employee facing separation from the Agency's rolls is encouraged to file for all types of benefits for which he/she may be eligible. Federal law prohibits an employee from receiving DOL wage-loss compensation benefits concurrently with an OPM disability retirement annuity. If the employee in the example is approved for both benefits, he will need to make an election between the two. Such an election is not irrevocable, and the employee would be entitled to switch to the more advantageous benefit at any time he chooses.